

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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28) No. C-06-5874 SC
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In the Matter of)
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The Complaint of JOHN DEFREITAS, as) ORDER DENYING JOHN
Owner of the 21' 2004 Malibu VLX) DEFREITAS' MOTION FOR
vessel bearing Hull No.) GOOD FAITH SETTLEMENT
MB2K7976B404, for exoneration from)
or limitation of liability.)
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AND)
)
In the Matter of)
)
The Complaint of JAMES CRONIN and) Related to
BRIAN MCDONALD, as Owners of the) No. C-06-2945 SC
21' 2005 Mastercraft Prostar 209)
vessel bearing Hull No.)
MBCMTLZZD505, for exoneration from)
or limitation of liability)
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I. INTRODUCTION

On March 9, 2007, Petitioner John Defreitas filed a Motion for Determination of Good Faith Settlement in each of the related cases listed in the caption. See In the Matter of the Complaint of John Defreitas ("Defreitas Action"), C-06-5874, Docket No. 33; In the Matter of the Complaint of James Cronin and Brian McDonald ("Cronin Action"), C-06-2945, Docket No. 37. The Motion seeks court approval of a purported settlement between Molly McKenna, the injured claimant, on the one hand and John Defreitas and Craig Kolos on the other. In the Defreitas Action, McKenna filed an

1 Opposition to Defreitas' Motion. See Docket No. 36. Also in the
2 Defreitas Action, James Cronin and Brian McDonald filed a
3 memorandum stating that they do not object to the settlement
4 between Defreitas, Kolos, and McKenna. See Docket No. 37.

5 For the reasons stated herein, the Court DENIES Petitioner's
6 Motion for Determination of Good Faith Settlement.

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8 **II. BACKGROUND**

9 The Defreitas Action and Cronin Action arise out of the same
10 circumstances and involve the same parties. According to the
11 Motions, on July 30, 2005, McKenna was waterskiing behind a boat
12 owned by John Defreitas and operated by Craig Kolos in Woodward
13 Canal in the Bay Area Delta. McKenna dropped her tow-line and was
14 floating in the water while waiting to be picked up. As the
15 Defreitas vessel was turning around, McKenna was struck by a boat
16 owned by James Cronin and Brian McDonald and operated by Steven
17 Cronin. See Motion for Settlement, 3. McKenna suffered severe
18 injuries including leg fractures and deep lacerations. McKenna
19 estimates the total value of the case to be approximately \$4
20 million. See Opp'n, 5.

21 Defreitas asserts that he maintains an insurance policy
22 covering his vessel and its operator. The policy has a \$300,000
23 liability limit, which is reduced by litigation expenses.
24 According to Defreitas' Motion:

25 Defreitas and Kolos, through their counsel of record, have
26 offered to McKenna, through her counsel of record, whatever
27 policy limit remains after costs of defense/representation of
Defreitas and Kolos in Action Nos. 2945 and 5874. McKenna
has tentatively accepted and a proposed settlement agreement

1 is being circulated. It is anticipated that if the
2 settlement is approved as being in good faith, the total
3 amount that will remain on the policy and which will be paid
4 to McKenna will exceed \$275,000.

5 Motion for Settlement, 5 (emphasis added).

6 **III. DISCUSSION**

7 The Defreitas Motion fails for two significant reasons.
8 First, Defreitas improperly bases his Motion upon California Code
9 of Civil Procedure § 877.6, which does not apply in this federal
10 admiralty action. See Miller v. Christoper, 887 F.2d 902, 903
11 (9th Cir. 1989). Defreitas acknowledges this error in his Reply
12 Brief, though it only came to his attention because Claimants
13 Cronin and McDonald noted the error in their Response. See Docket
14 Nos. 37, 38. In his Reply, Defreitas asserts that Federal
15 Admiralty and California State law provide the same standard for
16 Court approval of a good faith settlement. See Docket No. 38.
17 Yet, Defreitas' legal argument cannot cure the second significant
18 error in his Motion: the lack of a settlement agreement for the
19 Court to approve.

20 Petitioner improperly moves the Court to determine that his
21 settlement is in good faith when it is nothing more than an offer.
22 See Motion for Settlement, 5. Defreitas admits as much in the
23 facts section of his Motion, describing McKenna's acceptance as
24 tentative and stating that "a proposed settlement agreement is
25 being circulated." Motion for Settlement, 5. Furthermore,
26 Defreitas attaches as Exhibit 1 the latest version of the
27 tentative settlement agreement, a document which has not been
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1 executed by either party. See Motion for Settlement, Ex. 1. As a
2 result, Defreitas' Motion appears intended to encourage the Court
3 to find the settlement offer in good faith and effectively force
4 McKenna to accept the remainder of the insurance policy in
5 exchange for releasing her claims against Defreitas and Kolos.
6 The fact that McKenna filed an Opposition to Petitioner's Motion
7 should have sent a clear message that she had not agreed to
8 settle. See Opp'n, Docket No. 36.

9 The Court will pay close attention to future filings of
10 Petitioner Defreitas to ensure that the \$300,000 insurance policy
11 is not depleted by legally suspect and untimely court filings.
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13 **IV. CONCLUSION**

14 For the reasons described herein, the Court DENIES Petitioner
15 Defreitas' Motion for Determination of Good Faith Settlement.
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17 IT IS SO ORDERED.
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19 Dated: April 24, 2007



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UNITED STATES DISTRICT JUDGE
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